

STATE OF MICHIGAN
COURT OF APPEALS

HAROLD E. ENGLISH,

Plaintiff-Appellant,

v

MINACT, INC., d/b/a
GRAND RAPIDS JOB CORPS
CENTER, and TERRY WEST,

Defendants-Appellees.

UNPUBLISHED
October 20, 1998

No. 204503
Kent Circuit Court
LC No. 96-06095 NO

Before: Doctoroff, P.J., and Fitzgerald and Smolenski, JJ.

PER CURIAM.

Plaintiff alleged that his employer, defendant Minact, Inc., discharged him in retaliation for filing a worker's compensation claim, a violation of MCL 418.301(11); MSA 17.237(301)(11). He further alleged that he was a just-cause employee and defendants discharged him without cause. The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10), on both counts of plaintiff's amended complaint. Plaintiff appeals as of right. We affirm.

A grant or denial of a motion for summary disposition is reviewed de novo on appeal. *Michigan Mutual Ins Co v Dowell*, 204 Mich App 81, 86; 514 NW2d 185 (1994). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests whether there is factual support for a claim. *Michigan Mutual, supra*, 204 Mich App 85. The trial court must consider the pleadings, affidavits, admissions, and other documentary evidence submitted by the parties and, giving the benefit of reasonable doubt to the nonmoving party, must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Id.* The nonmoving party must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists, and cannot simply rest on mere conjecture and speculation to meet the burden of providing evidentiary proof establishing a genuine issue of material fact. *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 485-486; 502 NW2d 742 (1993).

Plaintiff first argues that a genuine issue of material fact existed with respect to whether defendants discharged him in retaliation for filing a worker's compensation claim. We disagree. Plaintiff

must show that the filing of the worker's compensation claim was a significant factor in defendants' decision to discharge him. *Goins v Ford Motor Co*, 131 Mich App 185, 190; 347 NW2d 184 (1983). In his attempt to meet his burden, plaintiff points to the fact that defendants discharged him the same day he returned from worker's compensation leave. However, while the proximity between the date plaintiff filed for worker's compensation benefits and the date of his discharge might be a starting point for questioning an employer's motives, it does not create a material question of fact as to whether the claim was a significant factor in plaintiff's discharge. See *Polk v Yellow Freight System, Inc*, 801 F2d 190, 197 (CA 6, 1986). Plaintiff also offers three vacation request forms showing that, before his back injury, defendants denied him vacation time that roughly coincided with the time he took off for his injury. He argues that defendants believe that he feigned the back injury to take off the denied vacation time. However, he offers only conjectural statements from his own deposition to support this argument. Plaintiff offers no evidence that defendants regularly discharge employees when they file claims or return from worker's compensation leave, nor does he show that he received good performance reviews before his discharge. He also fails to show that defendants objected in any way to his compensation claim. In the final analysis, plaintiff asks us to find a sufficient question of fact based only on the proximity of his discharge to defendants' refusal to grant his vacation time. As noted above, mere proximity is not sufficient to survive summary disposition.

The trial court in this case applied the burden shifting analysis found in *Clark v Uniroyal Corp*, 119 Mich App 820, 826; 327 NW2d 372 (1982), noting that once defendants rebut plaintiff's prima facie case by offering evidence of a legitimate, nondiscriminatory basis for the discharge, plaintiff must show that the proffered reason was a mere pretext. However, in *Clark*, we specifically adopted the burden shifting analysis for cases of employment discrimination based on race. *Clark, supra*, 119 Mich App 824. The analysis has not been explicitly adopted by a Michigan appellate court in a case under the Worker's Disability Compensation Act.

However, because we conclude that plaintiff did not meet his initial burden of showing that there exists a triable question of fact with respect to whether his worker's compensation claim was a substantial factor in his discharge, we do not reach the question of whether the burden shifting analysis applies here. Consequently, we need not address the sufficiency of defendants' nondiscriminatory basis for plaintiff's discharge or plaintiff's claim that it is a mere pretext.

In Count II of his amended complaint, plaintiff claims that he was a just cause employee and that he was terminated without just cause. We disagree with plaintiff's position that he was a just cause employee.

Plaintiff argues that defendant Minact's progressive discipline policy, accompanied by oral assurances from a supervisor that, "if you do a job, you have a job," created an employment relationship wherein he could only be discharged for just cause. However, defendants' disciplinary policy expressly provided that the guidelines set forth in the policy were suggestive rather than binding, and that "[i]n all cases, the disciplinary action will be tailored to the circumstances as well as the discipline of the employee." While the disciplinary guidelines do not expressly retain the right to discharge employees at will, the guidelines put employees on notice that Minact will use its progressive discipline policy at its discretion. In light of such a disclaimer, a reasonable employee could not

understand Minact to be making a promise of just cause employment. *Rood v General Dynamics Corp*, 444 Mich 107, 140; 507 NW2d 591 (1993). Furthermore, the oral assurances of employment cited by plaintiff, are insufficient, by themselves, to create a just cause employment relationship. *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 640-643; 473 NW2d 268 (1991). Accordingly, we conclude that the trial court properly granted summary disposition of plaintiff's wrongful discharge claim pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Martin M. Doctoroff

/s/ E. Thomas Fitzgerald

/s/ Michael R. Smolenski